

Introduced by Senator Scott

February 12, 2003

An act to amend ~~Section~~ Sections 7630, 7669, 8609, and 8814.5 of the Family Code, and to add Section 1516.5 to the Probate Code, relating to adoption.

LEGISLATIVE COUNSEL'S DIGEST

SB 182, as amended, Scott. ~~Adoption: consent waivers~~ Parent and child relationships: adoption.

(1) Existing law requires that an action to determine the existence of a father and child relationship with respect to a child who does not have a presumed father be consolidated with an action to terminate the parental rights of a father and be heard in the county in which the termination proceeding is filed.

This bill would instead provide that the action shall be heard in the court, rather than the county, in which the termination proceeding is filed and make a related change.

(2) Existing law provides that an order requiring or dispensing with a father's consent for the adoption of a child is conclusive and binding upon the father. Prior to the enactment of this provision, this order was authorized to be appealed from in the same manner as an order of the juvenile court declaring a person to be a ward of the juvenile court.

This bill would revise existing law to additionally provide that the order may be appealed from in the same manner as an order of the juvenile court declaring a person to be a ward of the juvenile court.

(3) Existing law authorizes a proceeding to declare a minor child free from the custody and control of one or both parents for purposes of

adoption if the child has been in out-of-home placement under the supervision of the juvenile court, the county welfare department, or other public or private licensed child-placing agency for a one-year period and the court makes a specified finding.

Existing law provides for the appointment of a guardian of an unmarried minor.

This bill would additionally authorize a proceeding to declare a minor child free from the custody and control of one or both parents for purposes of adoption if one or both parents do not have legal custody of the child, if the child has been in the physical custody of a guardian for a period of not less than 2 years, and if the court finds that the child would benefit from being adopted by his or her guardian, as specified. This provision would not apply to a dependent child of the juvenile court.

(4) Existing law provides that any person or organization that, without holding a valid and unrevoked license to place children for adoption, advertises that he, she, or it will accept children for adoption, or engages in other specified, related acts is guilty of a misdemeanor.

This bill would exclude a prospective adoptive parent from that provision.

(5) Existing law provides that, in an independent adoption, after a consent to an adoption is signed by a birth parent, the birth parent signing the consent has 30 days to revoke consent, as specified, or sign a waiver of his or her right to revoke consent. In certain cases, after revoking consent, a written notarized statement reinstating the original consent may be signed and delivered, as specified. In that case, the revocation of consent is void and a new 30-day period to revoke consent commences. ~~In the alternative, the birth parent may sign a waiver of the right to revoke consent in the presence of a representative of the State Department of Social Services or a delegated county adoption agency. If neither a representative of the State Department of Social Services nor a representative of a delegated county adoption agency is reasonably available, as defined, the waiver may be signed in the presence of a judicial officer of a court of record. Existing law provides that the waiver may not be signed until an interview has been completed by the department or delegated county adoption agency unless the waiver is signed in the presence of a judicial officer. In that case, the judicial officer is required to conduct the interview. Existing law also requires the department, the delegated county adoption agency, or the~~



court, within 10 working days of receiving a request, as specified, to interview any birth parent requesting to be interviewed.

This bill would instead provide that if a written notarized statement reinstating the original consent is signed and delivered, as specified, the revocation of consent is void and the remainder of the *original* 30-day period to revoke consent, rather than a new 30-day period, commences. ~~The bill would provide that the birth parent may sign a waiver of the right to revoke consent in the presence of the adoption service provider, rather than the department. The bill would also require the adoption service provider, rather than the department, to interview a birth parent with respect to the signing of these waivers. The bill would make a conforming change.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~—no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 8814.5 of the Family Code is amended~~

2 *SECTION 1. Section 7630 of the Family Code is amended to*
3 *read:*

4 7630. (a) A child, the child's natural mother, or a man
5 presumed to be the child's father under subdivision (a), (b), or (c)
6 of Section 7611, may bring an action as follows:

7 (1) At any time for the purpose of declaring the existence of the
8 father and child relationship presumed under subdivision (a), (b),
9 or (c) of Section 7611.

10 (2) For the purpose of declaring the nonexistence of the father
11 and child relationship presumed under subdivision (a), (b), or (c)
12 of Section 7611 only if the action is brought within a reasonable
13 time after obtaining knowledge of relevant facts. After the
14 presumption has been rebutted, paternity of the child by another
15 man may be determined in the same action, if he has been made
16 a party.

17 (b) Any interested party may bring an action at any time for the
18 purpose of determining the existence or nonexistence of the father
19 and child relationship presumed under subdivision (d) of Section
20 7611.

21 (c) An action to determine the existence of the father and child
22 relationship with respect to a child who has no presumed father
23 under Section 7611 or whose presumed father is deceased may be

1 brought by the child or personal representative of the child, the
2 Department of Child Support Services, the mother or the personal
3 representative or a parent of the mother if the mother has died or
4 is a minor, a man alleged or alleging himself to be the father, or the
5 personal representative or a parent of the alleged father if the
6 alleged father has died or is a minor.

7 (d) An action under subdivision (c) shall be consolidated with
8 a proceeding pursuant to Section 7662 if a proceeding has been
9 filed under Chapter 5 (commencing with Section 7660). The
10 parental rights of the alleged natural father shall be determined as
11 set forth in Section 7664. The consolidated action shall be heard
12 in the ~~county~~ court in which the Section 7662 proceeding is filed,
13 unless the court in which the action under subdivision (c) is filed
14 finds, by clear and convincing evidence, that transferring the
15 action to the other ~~county~~ court poses a substantial hardship to the
16 petitioner. Mere inconvenience does not constitute a sufficient
17 basis for a finding of substantial hardship. If the court determines
18 there is a substantial hardship, the consolidated action shall be
19 heard in the ~~county~~ court in which the paternity action is filed.

20 SEC. 2. Section 7669 of the Family Code is amended to read:

21 7669. An order requiring or dispensing with a father's consent
22 for the adoption of a child *may be appealed from in the same*
23 *manner as an order of the juvenile court declaring a person to be*
24 *a ward of the juvenile court and is conclusive and binding upon the*
25 *father. Nothing in this section limits the right to appeal from the*
26 *order and judgment.*

27 SEC. 3. Section 8609 of the Family Code is amended to read:

28 8609. (a) Any person, *other than a prospective adoptive*
29 *parent, or any organization that, without holding a valid and*
30 *unrevoked license to place children for adoption issued by the*
31 *department, advertises in any periodical or newspaper, by radio,*
32 *or other public medium, that he, she, or it will place children for*
33 *adoption, or accept, supply, provide, or obtain children for*
34 *adoption, or that causes any advertisement to be published in or by*
35 *any public medium soliciting, requesting, or asking for any child*
36 *or children for adoption is guilty of a misdemeanor.*

37 (b) Any person, other than a birth parent, or any organization,
38 association, or corporation that, without holding a valid and
39 unrevoked license to place children for adoption issued by the

1 department, places any child for adoption is guilty of a
2 misdemeanor.

3 *SEC. 4. Section 8814.5 of the Family Code is amended to*
4 *read:*

5 8814.5. (a) After a consent to the adoption is signed by the
6 birth parent or parents pursuant to Section 8801.3 or 8814, the
7 birth parent or parents signing the consent shall have 30 days to
8 take one of the following actions:

9 (1) Sign and deliver to the department or delegated county
10 adoption agency a written statement revoking the consent and
11 requesting the child to be returned to the birth parent or parents.
12 After revoking consent, in cases where the birth parent or parents
13 have not regained custody, or the birth parent or parents have failed
14 to make efforts to exercise their rights under subdivision (b) of
15 Section 8815, a written notarized statement reinstating the original
16 consent may be signed and delivered to the department or
17 delegated county adoption agency, in which case the revocation of
18 consent shall be void and ~~a new~~ *the remainder of the original*
19 *30-day period shall commence.* After revoking consent, in cases
20 in which the birth parent or parents have regained custody, upon
21 the delivery of a written notarized statement reinstating the
22 original consent to the department or delegated county adoption
23 agency, the revocation of consent shall be void and a new 30-day
24 period shall commence. The birth mother shall be informed of the
25 operational timelines associated with this section at the time of
26 signing of the statement reinstating the original consent.

27 (2) (A) Sign a waiver of the right to revoke consent on a form
28 prescribed by the department in the presence of a representative of
29 the department or delegated county adoption agency. If neither a
30 representative of the department nor a representative of a
31 delegated county adoption agency is reasonably available, the
32 waiver of the right to revoke consent may be signed in the presence
33 of a judicial officer of a court of record if the birth parent is
34 represented by independent legal counsel. “Reasonably
35 available” means that a representative from either the department
36 or the delegated county adoption agency is available to accept the
37 signing of the waiver within 10 days and is within 100 miles of the
38 location of the birth mother.

39 (B) An adoption service provider may assist the birth parent or
40 parents in any activity where the primary purpose of that activity

1 is to facilitate the signing of the waiver with the department, a
2 delegated county agency, or a judicial officer. The adoption service
3 provider or another person designated by the birth parent or
4 parents may also be present at any interview conducted pursuant
5 to this section to provide support to the birth parent or parents.

6 (C) The waiver of the right to revoke consent may not be signed
7 until an interview has been completed by the department or
8 delegated county adoption agency unless the waiver of the right to
9 revoke consent is signed in the presence of a judicial officer of a
10 court of record as specified in this section, in which case the
11 interview and the witnessing of the signing of the waiver shall be
12 conducted by the judicial officer. Within 10 working days of a
13 request made after the department, the delegated county adoption
14 agency, or the court has received a copy of the petition for the
15 adoption and the names and addresses of the persons to be
16 interviewed, the department, the delegated county adoption
17 agency, or the court shall interview, at the department or agency
18 office or the court, any birth parent requesting to be interviewed.
19 However, the interview, and the witnessing of the signing of a
20 waiver of the right to revoke consent of a birth parent residing
21 outside of California or located outside of California for an
22 extended period of time unrelated to the adoption may be
23 conducted in the state where the birth parent is located, by any of
24 the following:

25 (i) A representative of a public adoption agency in that state.

26 (ii) A judicial officer in that state where the birth parent is
27 represented by independent legal counsel.

28 (iii) An adoption service provider.

29 (3) Allow the consent to become a permanent consent on the
30 31st day after signing.

31 (b) The consent may not be revoked after a waiver of the right
32 to revoke consent has been signed or after 30 days, beginning on
33 the date the consent was signed or as provided in paragraph (1) of
34 subdivision (a), whichever occurs first.

35 *SEC. 5. Section 1516.5 is added to the Probate Code, to read:*

36 *1516.5. (a) A proceeding to have a child declared free from*
37 *the custody and control of one or both parents may be brought*
38 *pursuant to Part 4 (commencing with Section 7800) of Division 12*
39 *of the Family Code, if all of the following requirements are*
40 *satisfied:*

1 (1) *One or both parents do not have the legal custody of the*
2 *child.*

3 (2) *The child has been in the physical custody of the guardian*
4 *for a period of not less than two years.*

5 (3) *The court finds that the child would benefit from being*
6 *adopted by his or her guardian. In making this determination, the*
7 *court shall consider all factors relating to the best interest of the*
8 *child, including but not limited to, the nature and extent of the*
9 *relationship between all of the following:*

10 (A) *The child and the birth parent.*

11 (B) *The child and the guardian, including family members of*
12 *the guardian.*

13 (C) *The child and any siblings or half-siblings.*

14 (b) *The court shall appoint a court investigator or other*
15 *qualified professional to investigate all factors enumerated in*
16 *subdivision (a). The findings of the investigator or professional*
17 *regarding those issues shall be included in the written report*
18 *required pursuant to Section 7851 of the Family Code.*

19 (c) *This section does not apply to any child who is a dependent*
20 *of the juvenile court.*

21 *to read:*

22 ~~8814.5. (a) After a consent to the adoption is signed by the~~
23 ~~birth parent or parents pursuant to Section 8801.3 or 8814, the~~
24 ~~birth parent or parents signing the consent shall have 30 days to~~
25 ~~take one of the following actions:~~

26 ~~(1) Sign and deliver to the department or delegated county~~
27 ~~adoption agency a written statement revoking the consent and~~
28 ~~requesting the child to be returned to the birth parent or parents.~~
29 ~~After revoking consent, in cases where the birth parent or parents~~
30 ~~have not regained custody, or the birth parent or parents have failed~~
31 ~~to make efforts to exercise their rights under subdivision (b) of~~
32 ~~Section 8815, a written notarized statement reinstating the original~~
33 ~~consent may be signed and delivered to the department or~~
34 ~~delegated county adoption agency, in which case the revocation of~~
35 ~~consent shall be void and the remainder of the 30-day period shall~~
36 ~~commence. After revoking consent, in cases in which the birth~~
37 ~~parent or parents have regained custody, upon the delivery of a~~
38 ~~written notarized statement reinstating the original consent to the~~
39 ~~department or delegated county adoption agency, the revocation~~
40 ~~of consent shall be void and a new 30-day period shall commence.~~

1 The birth mother shall be informed of the operational timelines
2 associated with this section at the time of signing of the statement
3 reinstating the original consent.

4 (2) (A) Sign a waiver of the right to revoke consent on a form
5 prescribed by the department in the presence of a representative of
6 the delegated county adoption agency or the adoption service
7 provider.

8 (B) An adoption service provider may assist the birth parent or
9 parents in any activity where the primary purpose of that activity
10 is to facilitate the signing of the waiver with a delegated county
11 adoption agency or a judicial officer. The adoption service
12 provider or another person designated by the birth parent or
13 parents may also be present at any interview conducted pursuant
14 to this section to provide support to the birth parent or parents.

15 (C) The waiver of the right to revoke consent may not be signed
16 until an interview has been completed by the delegated county
17 adoption agency or an adoption service provider unless the waiver
18 of the right to revoke consent is signed in the presence of a judicial
19 officer of a court of record as specified in this section, in which
20 case the interview and the witnessing of the signing of the waiver
21 shall be conducted by the judicial officer. Within 10 working days
22 of a request made after the delegated county adoption agency,
23 adoption service provider, or the court has received a copy of the
24 petition for the adoption and the names and addresses of the
25 persons to be interviewed, the delegated county adoption agency,
26 the adoption service provider, or the court shall interview, at the
27 agency office, the office of the adoption service provider, or the
28 court, any birth parent requesting to be interviewed. However, the
29 interview, and the witnessing of the signing of a waiver of the right
30 to revoke consent of a birth parent residing outside of California
31 or located outside of California for an extended period of time
32 unrelated to the adoption may be conducted in the state where the
33 birth parent is located, by any of the following:

34 (i) A representative of a public adoption agency in that state.

35 (ii) A judicial officer in that state where the birth parent is
36 represented by independent legal counsel.

37 (iii) An adoption service provider.

38 (3) Allow the consent to become a permanent consent on the
39 31st day after signing.

1 ~~(b) The consent may not be revoked after a waiver of the right~~
2 ~~to revoke consent has been signed or after 30 days, beginning on~~
3 ~~the date the consent was signed or as provided in paragraph (1) of~~
4 ~~subdivision (a), whichever occurs first.~~

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